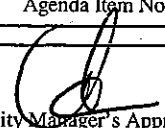




*Report to the Joint Committee
of the Auburn City Council
and Auburn Public Financing
Authority*

Action Item	3
Agenda Item No.	
	
City Manager's Approval	

To: Honorable Mayor and City Council Members
Chair and Board Members, Auburn Public Financing Authority

From: Robert Richardson, City Manager / Executive Director
Andy Heath, Administrative Services Director

Date: July 27, 2009

Subject: AUTHORIZATION TO ISSUE REVENUE BONDS TO FINANCE
WASTEWATER TREATMENT FACILITY IMPROVEMENTS AND
UPGRADES

The Issue

Shall the City Council and the Board of Directors authorize the issuance of Revenue Bonds to finance public improvements and public facilities related to permit compliance upgrades necessary for the City's Wastewater Treatment Facility by adopting certain resolutions authorizing the issuance and delivery of its Revenue Bonds, and execution of an Indenture of Trust, a Preliminary Official Statement and a Final Official Statement, and a Bond Purchase Contract in connection therewith; and authorizing official actions and execution of documents related thereto?

Conclusions and Recommendations

That the City Council, by **RESOLUTION**,

- A. Authorize documents and official actions relating to the installment sale financing of Wastewater System Facilities and the issuance and sale of Wastewater Revenue Bonds by the Auburn Public Financing Authority; and
- B. Authorize the appointment of Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel and disclosure counsel.

That the Auburn Public Financing Authority Board of Directors, by **RESOLUTION**,

- A. Authorize the issuance of Revenue Bonds (Bonds) under the Bond Law in the aggregate principal amount of not to exceed \$9,500,000;

- B. Approve the Indenture in substantially the form thereof on file with Secretary together with any additions thereto of changes therein deemed necessary or advisable by the Chairman, Executive Director or Treasurer of the Public Financing Authority ("Authorized Officers"), including, without limitation, the addition to the Indenture of bond insurance, and/or that a portion of the Bonds may be issued as "Build America Bonds" ("BABs") under the federal Build America Bonds Act of 2009, and the final interest rates payable with respect to the Bonds and the final principal amount and annual maturities of the Bonds;
- C. Authorize the Bonds to be sold by negotiated sale to the Auburn Public Financing Authority (Authority) and re-sold concurrently by the Authority to Southwest Securities (the underwriter) under a Bond Purchase Contract in substantially the form on file with the Secretary together with any additions thereto or changes therein approved by the Authorized Officer, whose execution thereof shall be conclusive evidence of the approval of any such additions or changes. The Underwriter's discount on the Bonds shall not exceed 0.75% , and the true interest rate on the Bonds (taking into account any original issue discount on the sale thereof) may not exceed 7.25% per annum, provided however, that as to Bonds issued as BABs, the true interest rate on the Bonds may not exceed 9.00% per annum; and
- D. Approve, and deem nearly final, the Preliminary Official Statement describing the Bonds in the form on file with the Secretary.

Background

At the June 25, 2007 City Council meeting, staff presented, and the Council approved, an increase in wastewater utility rates necessary to implement the Wastewater Treatment Plant Schedule Action Plan at a cost of roughly \$8 million. The plan provides a road map for the City to meet the 2005 Regional Water Quality Control Board's New Discharge Requirements and deferred connection to the regional water trunk line in Lincoln. The City must complete the discharge requirements by March 2011. Based on the significance of the capital improvement projects and current capital maintenance, a bond issuance amount of roughly \$8.815 million is necessary to begin to address priority projects over the next 2-3 years. To meet the financial needs of the wastewater enterprise, staff believes a not to exceed 30 year financing term is appropriate.

At the June 8, 2009 City Council meeting, the necessary Implementing Resolution was formally approved and the Council directed staff to initiate the process and to draft all necessary documents to issue revenue bonds for the purpose of financing wastewater improvements at the City's wastewater treatment facility.

Analysis

Over the past several months, staff has been working diligently with the City's financial advisor, Urban Futures, to formulate recommendations for proceeding with the financing of wastewater infrastructure improvements.

The chart below outlines the capital improvements adopted as part of the sewer rate study completed by Ecologic, which totals an estimated \$7.940 million. This figure takes into account inflation, as well as additional costs that may be required while new facilities are under construction.

Item No.	Capital Improvement Description	Cost
1	Mobilization, Bonds & Ins.	\$295,000
2	Site Grading and Paving	\$127,000
3	Yard Piping	\$194,000
4	Secondary Clarifier Number 3	\$1,142,000
5	UV Disinfection System	\$1,902,000
6	MCC Building 2	\$284,000
7	Vehicle Storage Building	\$220,000
8	Miscellaneous Site Modifications	\$170,000
9	RAS Pump Modifications	\$50,000
10	Plant Entrance Road Raving	\$135,000
11	Electrical (25%)	\$985,000
12	SCADA Upgrade (25%)	\$648,900
13	Contingency (10%)	
	Construction Cost Subtotal	\$7,137,900
	Engineering, CM, Administration	\$803,000
	Total Estimated Project Cost	\$7,940,900

Structure of the Financing Transaction

The Board and Council actions requested at this time approve the documents which have been prepared to complete the financing: the Installment Sale Agreement, which provides for the sale from the Authority to the City of the improvements to be built and obligates the City to pay installment payments for such purchase from revenues of the wastewater system; the Indenture of Trust (entered into by the Authority only), under which the trustee receives the Installment Payments and pays amounts over to investors who purchased the bonds; the Preliminary Official Statement, which describes to potential purchasers of the Bonds the nature of the Bonds and their security; and finally, the Bond Purchase Contract, under which the Authority and the City agree to sell the Bonds to the selected underwriter. The details of these documents will be finalized prior to the sale date and provisions may be added or modified to reflect issuing a portion as "Build America Bonds" under the recent federal stimulus package or to add bond insurance, which the underwriter is currently evaluating for economic feasibility on behalf of the

City. The revenue bonds will be sold to the public by the City's underwriter, Southwest Securities (formerly ML Stern). The City will engage Wells Fargo National Bank to act as the Trustee for this transaction. The Trustee will charge an annual fee of \$1,800 to act as fiduciary custodian for the bond proceeds and debt service payments.

The Financing Authority plans to issue revenue bonds that will amortize for no more than 30 years. City staff along with the financing team has been working with Standard & Poor's and recently received the Financing Authority's underlying rating for the bonds of "AA-", which reflects the City's strong financial position and relative high investment quality of the proposed bonds. The interest rate on the bonds will be fixed for no more than a 30 year financing period. Bond insurer Assured Guaranty/FSA has given this transaction a bond insurance commitment at the price of 0.45% of the total principal and interest cost over the term of the borrowing. Bond insurance will give the transaction a "AAA" rating. The bond insurance will be in place for the life of the revenue bonds. The financing team will perform the necessary research and analysis to determine if bond insurance is economically beneficial.

Amount of Revenue Bonds Issued

Based on current estimates, approximately \$8,815,000 of Revenue Bonds would need to be issued to finance the high priority water facility and infrastructure improvements. A calculation of this amount is summarized below:

Par Amount of Bonds	<u>\$ 8,815,000</u>
Deposit to Acquisition Fund	\$ 7,940,000
Reserve Fund (1)	\$ 581,140
Bond Insurance Premium (2)	\$ 78,110
Bond Issuance Costs (3)	<u>\$ 215,750</u>
Total Uses of Funds	<u>\$ 8,815,000</u>

(1) Calculated as one year's estimated debt service at an assumed annual interest rate required by the bond insurer.

(2) Calculated as 0.45% of total estimated principal and interest.

(3) Includes bond counsel fees, rating agency fees, underwriter fees, financial advisor, printing fees and other miscellaneous costs.

Because of the uncertainty of interest rates, it would be prudent to authorize the issuance of Revenue Bonds in an amount not to exceed \$9,500,000.

Direct Payment Build America Bonds

As part of the American Recovery and Reinvestment Act of 2009, all state and local government issuers may issue Build American Bonds ("BABs"). Unlike traditional municipal bonds, the interest on BABs is taxable. A Federal subsidy equal to 35% of interest on the BABs is paid to the issuer of the bonds. The universe of investors in taxable bonds is much larger than the universe for traditional tax-exempt municipal bonds. Depending upon market conditions, BABs may provide a lower cost of borrowing than traditional tax-exempt bonds.

TWO PERCENT COST OF ISSUANCE LIMITATION

BABs are subject to a 2% cost of issuance limitation, that is, the costs to issue bonds (e.g., underwriter's discount, bond insurance premium, bond counsel, financial advisors, etc.) may not exceed 2% of the par amount of the bonds less any original issue discount or with any original issue premium. The cost of bond insurance, 0.45% of the total principal and interest of the bonds, will put the deal over this two percent limitation and require a cash contribution from the City to cover the excess. Based upon market conditions on July 17, 2009, the excess costs of issuance amount is \$99,700.

DECIDING BETWEEN A BAB OR TRADITIONAL TAX-EXEMPT ISSUANCE

The Underwriter shall provide the City and Authority with debt service schedules for both a BAB (net of the 35% Federal subsidy) and a traditional tax-exempt bond transaction. Should the net debt service after the 35% direct subsidy of the BAB issuance be lower than the traditional tax-exempt bonds, the Underwriter shall provide a net present value analysis of the difference in debt service. This net present value, when compared to the amount the City must contribute, represents the relative value of issuing BABs over traditional tax-exempt bonds. On July 17, 2009, the debt service of the traditional tax-exempt bond structure was lower than the debt service of the BAB structure net of the 35% Federal subsidy; in other words, the tax-exempt issuance provided the lower cost of borrowing on that date.

Market conditions change day to day, so the ideal transaction today may not be the ideal transaction tomorrow. The financing team will continue to monitor market conditions and advise the City and Authority accordingly.

BAB's CONSIDERATIONS

Here are the issues associated with BAB's the City should consider:

1. **New Program-** This is a new program and has become increasingly popular by municipalities. The Treasury is currently working on getting program administration up and running. The program has been staffed and there is a formal process identified but it is not electronic yet. In order for the City to collect the subsidy, they will need to fill out IRS Form 8038 CP. Once the form is

- submitted the Treasury will approve and pay. The goal is to pay timely or just prior to any debt service payment date.
2. **Timely Payment-** The rating agencies and recent articles have discussed the direct subsidy payments and the risk associated with delayed payments due to the lack of an electronic system for processing subsidy payments. The WWTP Enterprise would need to demonstrate adequate debt service coverage and the ability to handle a delayed payment.
 3. **Long-Term Agreement with the Federal Government-** The City is entering into a long-term relationship with the Federal Government
 4. **IRS Could Offset Subsidy with Taxes Owed by the City-** This is not a big concern but worth noting. For Auburn the only federal taxes paid are Payroll Taxes .

The resolutions of the City and the Auburn Public Financing Authority authorizing the issuance of the bonds provide that the bonds may be issued all or in part as standard tax-exempt bonds and/or BABs. If issued as BABs the documents will need to have some particular tax language inserted. The decision on issuing BABs is a purely economic one for the City whereby the borrowing cost of each type of bond needs to be compared.

Since interest rates and demand for bonds change daily, staff's recommendation is reflected in resolutions- that staff be delegated the authority to make the BAB decision when the bonds are ready to be marketed after consulting with the financial advisor and underwriter as to market conditions at that time.

Documents to be Approved

Approval of the attached Resolutions authorizing the financing will authorize the execution of the following documents which are not included with this memorandum due to their length, but are available for review in both the City Clerk's Office and the Administrative Services Department:

- ***Indenture of Trust.*** This document contains the terms of the Bonds, including payment and redemption provisions, definition and pledge of water enterprise revenue to pay the Bonds, Rights and Duties of the Trustee, remedies upon a default in the payment of the Bonds, and final discharge of the Bonds and other related matters.
- ***Installment Sale Agreement.*** This provides for the sale from the Authority to the City of the improvements to be built and obligates the City to pay installment payments for such purchase from revenues of the wastewater system. The obligation of the City to make payments is limited to funds available from wastewater revenues and the Authority's obligation to pay the Bonds is limited to funds so received from the City under this Agreement.
- ***Preliminary Official Statement.*** This is the Financing Authority's document pursuant to which the Bonds will be offered for purchase by the public. This document must contain all facts material to the Bonds and the City (with certain permitted exceptions to be completed in the final Official Statement) and must not omit any such material facts.

- ***Bond Purchase Contract.*** This document contains the obligation of the underwriter to accept and pay for the Bonds, provided that all of the covenants and representations of the City and Authority are met and certain other conditions excusing performance by the underwriter do not exist.

Alternatives Available to City Council / Boards; Implications of Alternatives

1. Adopt the resolutions approving the issuance of wastewater revenue bonds and execution of all related documents thereto.
2. Do not adopt the resolutions and direct staff accordingly.

Fiscal Impact

Based on current interest rates, the estimated annual debt service on the bonds will be approximately \$580,000 - \$600,000. This amount will be allocated from the Sewer Enterprise Fund on an annual basis until the bonds are fully amortized. The bond issuance costs, including the bond insurance premium (to the extent insurance is cost advantageous) to be paid from the bond proceeds will be approximately \$294,000.

Attachments: Recommended Resolutions
Professional Services Contract – Jones Hall Law Corporation

NOTE: Due to the size of the documents, the Indenture of Trust, Preliminary Official Statement and Bond Purchase Contract are available for review in either the City Clerk's Office or the Administrative Services Department.

AGREEMENT FOR LEGAL SERVICES

BETWEEN THE CITY OF AUBURN AND JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES IN CONNECTION WITH A 2009 WASTEWATER SYSTEM FINANCING

This AGREEMENT FOR LEGAL SERVICES is entered into this ____ day of July, 2009, between the CITY OF AUBURN (the "City") and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys");

BACKGROUND:

1. The City is a public body, corporate and politic, duly established and authorized to transact business and exercise powers under the laws of the State of California, and has the power to enter into contracts for any of its corporate purposes.

2. The City wishes to raise funds to finance certain improvements to its Wastewater System, consisting generally of the expansion of the wastewater treatment and related facilities of the City.

3. The City and the Auburn Public Financing Authority (the "Authority") desire that the Authority issue its Auburn Public Financing Authority Wastewater Revenue Bonds, Series 2009 (the "Bonds") to provide funds to the City to finance the project.

4. In order to provide for the repayment of the Bonds, the City expects to enter into an Installment Sale Agreement under which the City agrees to pay certain installment payments which are calculated to be sufficient to enable the Authority to pay the Bonds.

5. In connection with the entering into of the Installment Sale Agreement and the issuance of the Bonds by the Authority, the City requires the advice and assistance of bond counsel and disclosure counsel.

AGREEMENT:

In consideration of the foregoing and the mutual covenants contained in this Agreement, the City and Attorneys agree as follows:

Section 1. Identification of Client. Attorneys shall represent the City, and, if necessary or advisable, the Auburn Public Financing Authority (the "Authority") in connection with the proceedings for the authorization, issuance and sale of the Bonds. Attorneys shall not represent, and shall owe no duties to, any other party than the City and the Authority, including but not limited to the financial advisor, trustee and underwriter of the Bonds.

Section 2. Duties of Attorneys.

Bond Counsel Services. Attorneys shall perform all of the following services as bond counsel in connection with the issuance and sale of the Bonds:

- (1) Consultation and cooperation with the City, including the City's financial advisor and other consultants, staff and employees of the City, and assisting them in the formulation of a coordinated financial and legal issuance of the Bonds.
- (2) Preparation of all legal proceedings for the authorization, issuance and delivery of the Bonds; including (a) preparation of an indenture of trust authorizing the issuance of the Bonds and an installment sale agreement or other principal documents related to the issuance of the Bonds, (b) preparation of a resolution of the Authority (if necessary) authorizing the issuance and sale of the Bonds, (c) preparation of a resolution of the City Council of the City and of the Authority approving the issuance and sale of the Bonds and delivery of related documents, (d) preparation of a bond purchase contract for the Bonds, (e) preparation of all documents required for the closing of the Bonds, (f) supervising the closing, and (g) preparation of all other proceedings incidental to or in connection with the issuance, sale and delivery of the Bonds.
- (3) Advising the City and Authority as to compliance with federal tax law as required to ensure that interest on the Bonds is exempt from federal income taxation.
- (4) Upon completion of proceedings to Attorneys' satisfaction, providing a legal opinion approving the validity and enforceability of the proceedings for the authorization, issuance and delivery of the Bonds, and stating that interest on the Bonds is (a) excluded from gross income for purposes of federal income taxes and (b) exempt from California personal income taxation. This opinion will be addressed to the City, and may also be addressed to the underwriter and other participants in the financing.
- (5) Preparing a Summary of Legal Documents and form of legal opinion to be attached to the official statement.
- (6) Legal consultation requested by the City concerning the Bonds, following the issuance of the Bonds.
- (7) Such other and further services as are normally performed by bond counsel in connection with similar financings.

Disclosure Counsel Services. Attorneys shall also perform all of the following services as disclosure counsel in connection with the issuance and sale of the Bonds:

- Participating in the preparation of the Official Statement by consulting with representatives of the City, the financial advisor and others,

gathering information for disclosure in the Official Statement, and assisting in drafting the Official Statement.

- Rendering an opinion to the City and Authority and the original purchaser of the Bonds stating that based upon Attorney's participation in the preparation of the Official Statement, nothing has come to their attention to lead them to believe that the Official Statement (except for any financial statements and the financial and statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion included therein, and The Depository Trust Company and its book-entry system and information in the Appendices, as to which we express no view) as of the date of the Official Statement or the date hereof contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3. Compensation. For the bond counsel services and disclosure counsel services of Attorneys for a bond issuance in one or more series at the same time, the City will pay Attorneys a fee of \$45,000 for bond counsel and \$15,000 for disclosure counsel. The fee will not be subject to increase if the Bonds are insured or issued in whole or in part as "Build America Bonds".

In addition, the City shall pay to Attorneys all direct out-of-pocket expenses for messenger and delivery service, photocopying, closing costs, legal publication expenses and other costs and expenses incurred by Attorneys in connection with their services rendered under this Agreement, not to exceed \$2,000.

Payment of said fees and expenses is entirely contingent upon the successful issuance of the Bonds by the City, and said fees and expenses are due and payable in full upon the issuance of the Bonds. If the Bonds are not issued by the City, Attorneys will not be entitled to any compensation whatsoever for their services rendered under this Agreement.

Section 4. Responsibilities of the City. The City will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the City, or other deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the Bonds, including the cost of preparing certified copies of proceedings required by Attorneys in connection with the issuance of the Bonds, rating agency charges, the cost of financial advisory services, printing and publication costs.

Section 5. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances will Attorneys be considered an agent, partner, or employee of the City.

Section 6. Liability Insurance. Attorneys must maintain at their own expense at all times during the term of this Agreement policies of insurance, acceptable to the City, covering its workers' compensation injuries, public liability and professional liability as referenced below:

1. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
2. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
3. Worker's Compensation insurance as required by the laws of the State of California.
4. Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

Section 7. Assignment. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the City.

Section 8. Termination of Agreement. This Agreement may be terminated by the City at any time by giving written notice to Attorneys with or without cause. In the event of termination, all finished and unfinished documents, exhibits, project data, reports, and evidence will, at the option of the City, become its property and will be delivered to it by Attorneys.

IN WITNESS WHEREOF, the City and Attorneys have executed this Agreement for Legal Services as of the date first above written.

CITY OF AUBURN

By _____
Authorized Representative

**JONES HALL,
A PROFESSIONAL LAW CORPORATION**

By _____
Authorized Representative

Approved as to Form:

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
AUTHORIZING DOCUMENTS AND OFFICIAL ACTIONS RELATING TO
THE INSTALLMENT SALE FINANCING OF WASTEWATER SYSTEM
FACILITIES AND THE ISSUANCE AND SALE OF WASTEWATER
REVENUE BONDS BY THE AUBURN PUBLIC FINANCING
AUTHORITY**

WHEREAS, the City of Auburn (the "City") owns and operates facilities for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System"), and the City wishes to raise funds to finance certain improvements to the Wastewater System, consisting generally of the expansion of the wastewater treatment and related facilities of the City (the "Project");

WHEREAS, the Authority has been formed for the purpose of assisting the City in the financing and refinancing of public capital improvements such as the Project;

WHEREAS, the City desires that the Authority issue its Auburn Public Financing Authority Wastewater Revenue Bonds, Series 2009, in the not to exceed principal amount of \$9,500,000 (the "Bonds") to provide funds to the City to finance the Project;

WHEREAS, the Authority will use a portion of the proceeds of the Bonds to construct the Project for sale to the City pursuant to an Installment Sale Agreement, expected to be dated as of August 1, 2009 (the "Installment Sale Agreement");

WHEREAS, in order to provide for the repayment of the Bonds, the City has agreed to purchase the Project from the Authority pursuant to the Installment Sale Agreement, under which the City will agree to pay certain installment payments which are calculated to be sufficient to enable the Authority to pay the principal of and interest and premium (if any) on the Bonds when due and payable;

WHEREAS, the Authority proposes to sell the Bonds to Southwest Securities, as underwriter (the "Underwriter") pursuant to a Bond Purchase Contract among the Authority, the City and the Underwriter, the form of which is on file with the City Clerk;

WHEREAS, the Authority and the City have caused to be prepared a preliminary Official Statement describing, among other things, the City's Wastewater System and the Bonds, the form of which is on file with the City Clerk; and

WHEREAS, the City Council wishes at this time to take action approving such financing transaction and all related documents and actions;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUBURN AS FOLLOWS:

Section 1. Approval of Bonds; Significant Public Benefits. The City Council hereby approves the financing plan described in the recitals of this Resolution. To that end, the City Council hereby approves the issuance of the Bonds by the Authority under the provisions of

Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, in the not to exceed principal amount of \$9,500,000 for the purpose of providing funds to finance the Project. The City Council hereby finds and determines that, as a result of the issuance and sale of the Bonds by the Authority, there are significant public benefits to the citizens of the City within the meaning of Section 6586 of the California Government Code. Such significant public benefits consist of savings in interest costs and costs of issuance by financing the Project efficiently in accordance with the Installment Sale Agreement.

Section 2. Approval of Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement between the Authority and the City, under which the Authority agrees to sell the Project to the City for a purchase price to be paid in semiannual installment payments. The Installment Sale Agreement is hereby approved in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager or the Administrative Services Director (each, an "Authorized Officer"). Such changes may include such provisions as are necessary and appropriate for the Bonds to be insured by a municipal bond insurance company approved by an Authorized Officer, and/or provisions necessary to facilitate all or a portion of the Bonds being issued as direct-payment "Build America Bonds" ("BABs") under the federal Build America Bonds Act of 2009, under which interest on such bonds will be taxable to the holders thereof and the Authority will receive a credit on the interest cost, with the benefit of such credit to be passed through to the City, provided a savings in interest cost over non-BABs or uninsured bonds is to be realized. Each Authorized Officer and the Mayor is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of each of the Installment Sale Agreement, and such execution shall be conclusive evidence of the approval of the final form thereof.

Section 3. Sale of Bonds. The City Council hereby approves the sale of the Bonds by the Authority to Southwest Securities, as underwriter (the "Underwriter"), under the provisions of Sections 6589 and 6591(f) of the Government Code of the State of California and pursuant to a Bond Purchase Contract among the Authority, the City and the Underwriter, in substantially the form on file with the Clerk, together with any additions thereto or changes therein approved by an Authorized Officer, and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such additions or changes. Each Authorized Officer and the Mayor is hereby authorized and directed to execute the Bond Purchase Contract for and in the name and on behalf of the City, provided that (a) the Underwriter's discount on the Bonds shall not exceed .75% (750 basis points), and (b) the true interest rate on the Bonds (taking into account any original issue discount on the sale thereof) may not exceed 7.25% per annum; provided however, that as to Bonds issued as BABs, the true interest rate on the Bonds (taking into account any original issue discount on the sale thereof) may not exceed 9% per annum, and any City contribution toward costs of issuance shall not exceed \$150,000.

Section 4. Official Statement. The City Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the City Clerk, together with such modifications thereof as may be approved by the City Manager or the Administrative Services Director. Each Authorized Officer and the Mayor is each hereby authorized and directed to (a) execute and deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be nearly final as of its date within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the final Official Statement for and in the name and on behalf of the

City. The City Council hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter and the execution of the Continuing Disclosure Certificate shown as an exhibit thereto.

Section 5. Legal Counsel. For the authorization, issuance, sale and delivery of the Bonds, the City appoints Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel and disclosure counsel. The appropriate officials of the City are hereby authorized and directed, but not required, to enter into a written agreement with such law firm for its services in connection with the Bonds. Such law firm may also serve as counsel to the Authority in connection with the Bonds.

Section 6. Official Actions. The Mayor, the City Manager, the Administrative Services Director, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved by this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in case such officer is absent or unavailable.

Section 7. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Auburn at a meeting thereof held on the _____ day of _____, 2009.

AYES:

NOES:

ABSENT:

ATTEST:

Mayor

City Clerk

RESOLUTION NO. ____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE AUBURN
PUBLIC FINANCING AUTHORITY AUTHORIZING THE ISSUANCE
AND SALE OF WASTEWATER REVENUE BONDS TO FINANCE
WASTEWATER SYSTEM FACILITIES AND APPROVING RELATED
DOCUMENTS AND OFFICIAL ACTIONS**

WHEREAS, the City of Auburn (the "City") owns and operates facilities for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System"), and the City wishes to raise funds to finance certain improvements to the Wastewater System, consisting generally of the expansion of the wastewater treatment and related facilities of the City (the "Project");

WHEREAS, the Authority has been formed for the purpose of assisting the City in the financing and refinancing of public capital improvements such as the Project;

WHEREAS, the City desires that the Authority issue its Auburn Public Financing Authority Wastewater Revenue Bonds, Series 2009, in the not to exceed principal amount of \$9,500,000 (the "Bonds") under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law");

WHEREAS, in order to provide for the repayment of the Bonds, the City has agreed to purchase the Project from the Authority pursuant to an Installment Sale Agreement, expected to be dated as of August 1, 2009 (the "Installment Sale Agreement") under which the City will agree to pay certain installment payments which are calculated to be sufficient to enable the Authority to pay the principal of and interest and premium (if any) on the Bonds when due and payable.

WHEREAS, the Authority proposes to sell the Bonds to Southwest Securities, as underwriter (the "Underwriter") pursuant to a Bond Purchase Contract among the Authority, the City and the Underwriter, the form of which is on file with the Secretary of the Authority;

WHEREAS, the Authority and the City have caused to be prepared a preliminary Official Statement describing, among other things, the City's Wastewater System and the Bonds, the form of which is on file with the Secretary of the Authority; and

WHEREAS, the Board of Directors of the Authority wishes at this time to take action approving such financing transactions and all related documents and actions;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AUBURN PUBLIC FINANCING AUTHORITY AS FOLLOWS:

Section 1. Approval of Financing Plan; Authorization of Bonds. The Board of Directors hereby approves the financing plan described in the recitals of this Resolution. To that end, the Board of Directors hereby authorizes the issuance of the Bonds under the Bond Law in the not to exceed principal amount of \$9,500,000 for the purpose of providing funds to finance the Project.

Section 2. Approval of Related Financing Agreements. The Board of Directors hereby approves each of the following agreements required to implement the financing plan to be accomplished by the Bonds, in substantially the respective forms on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Chairman, the Executive Director or the Treasurer (each, an "Authorized Officer"), and the execution thereof by the Chairman or the Executive Director shall be conclusive evidence of the approval of any such changes or additions. Such changes may include such provisions as are necessary and appropriate for the Bonds to be insured by a municipal bond insurance company approved by an Authorized Officer, and such provisions as are required so that all or a portion of the Bonds may be issued as direct-payment "Build America Bonds" ("BABs") under the federal Build America Bonds Act of 2009 under which interest on such bonds will be taxable to the holders thereof and the Authority will receive a credit on the interest cost, with the benefit of such credit to be passed through to the City, provided a savings in interest cost over non-BABs or uninsured bonds is to be realized.

- (a) Indenture of Trust between the Authority and Wells Fargo Bank, National Association, as trustee, prescribing the terms and conditions upon which the Bonds will be issued.
- (b) Installment Sale Agreement between the Authority and the City, under which the Authority agrees to sell the Project to the City in consideration of semiannual installment payments.

Each Authorized Officer is hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest the final form of each of the foregoing agreements.

Section 3. Sale of the Bonds. The Bonds shall be sold by the Authority to Southwest Securities, as underwriter (the "Underwriter"), under the provisions of Sections 6589 and 6591(f) of the Government Code of the State of California and pursuant to a Bond Purchase Contract among the Authority and the Underwriter, in substantially the form on file with the Clerk, together with any additions thereto or changes therein approved by an Authorized Officer, and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such additions or changes. Each Authorized Officer is hereby authorized and directed to execute the Bond Purchase Contract for and in the name and on behalf of the Authority, provided that (a) the Underwriter's discount on the Bonds shall not exceed .75% (750 basis points), and (b) the true interest rate on the Bonds (taking into account any original issue discount on the sale thereof) may not exceed 7.25% per annum; provided however, that as to Bonds issued as BABs, the true interest rate on the Bonds (taking into account any original issue discount on the sale thereof) may not exceed 9% per annum.

Section 4. Approval of Final Official Statement. The preliminary Official Statement relating to the Bonds is approved for distribution by the Underwriter. The preliminary Official Statement shall be revised, pending such distribution as shall be required to cause the preliminary Official Statements to contain any further information necessary to accurately describe the City's Wastewater System and the Bonds. Each Authorized Officer is authorized and directed, on behalf of the Authority, to deem the preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). The final Official Statement which shall include such changes and additions thereto deemed advisable by the Authority Executive Director or Authority Treasurer and such information permitted to be excluded from the Preliminary Official Statements pursuant to the Rule, is hereby approved for

delivery to the purchasers of the Bonds, and each Authorized Officer is authorized and directed to execute the final Official Statement for and on behalf of the Authority and each Authorized Officer is authorized and directed to deliver to the purchaser of the Bonds (i) a certificate as to the accuracy and completeness of the information set forth therein and (ii) a Continuing Disclosure Certificate substantially in the form appended to the final Official Statement.

Section 5. Official Actions. The Chairman, the Executive Director, the Treasurer, the Secretary and all other officers of the Authority are each authorized and directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, including requisitions for the payment of costs of issuance, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the Board of Directors of the Auburn Public Financing Authority at a meeting thereof held on the _____ day of _____, 2009.

AYES:

NOES:

ABSENT:

ATTEST:

Chairman

Secretary

